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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,476	07/01/2002	Jorg Peter Schur	von Kreisler.021	3376
110	7590	07/14/2006	EXAMINER	
DANN, DORFMAN, HERRELL & SKILLMAN 1601 MARKET STREET SUITE 2400 PHILADELPHIA, PA 19103-2307			LEVY, NEIL S	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 07/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/069,476	SCHUR, JORG PETER	
	Examiner	Art Unit	
	NEIL LEVY	1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15,17,23-26 is/are pending in the application.
- 4a) Of the above claim(s) 14,17 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13,15 and 24-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-15,17,23-26 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>12/20/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

References cited on IDS have been considered in the manner a standard PTO search would elicit references. Applicant is requested to point out those references particularly directed to the claimed invention.

Claims 14,17,23 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/03/03.

Claims 1-13, 15, 24-26 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The rejection is maintained; applicant points to table 2, but according to page 26, culture plants, not post harvest tobacco, was treated; with the prescription showing 4 identifiable components, and one unidentified phenol, as a moiety of an unidentified essential oil, unless it is a phenol compound (tannin is already required) contained as a compound with an essential oil-as a trace or mixed separate compound with the essential oil. If applicant can not identify the compound which is the phenol, or the essential oil with which it is mixed, if it is not part of the essential oil compound, claims should then be limited to whatever compounds applicant has support for as providing a recognizable degree of protection from any microbial attack normally associated with post harvest tobacco. Note that example T-7, whatever that is, is no better than control, while T-1, T-2 are also not biologically significant, as less than 1 log reduction is seen. There is no claim reciting the 5 or 6 components (essential as phenol, or with a phenol) shown treating pre-harvest tobacco at the referred table. We question whether this application has any support for the claimed compositions applied as a method of treating harvested tobacco by spraying or by any other means, in order to protect from microbial attack. Certainly, no ratios or concentrations of the component ingredients, inclusive of those unidentified, is shown, as an aqueous or rape seed oil composition; so far as examiner can determine; that are effectively applied to tobacco to protect against microbial attack.

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Claim 1-13, 15, 24-26 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Schur-WO 96/29895 in view of Mc Cradle 5747416, Beilfuss et al CA 2012288 Bessette et al WO 98/54971, and Stevenson 5091405 and further in view of Erslev - 1331331 .

Schur, p. 3, shows in general, foods and other products, perishable, are kept fresh with bacteria static and fungi static. active, but Schur shows 2 or more flavoring

agents are effective (p.5) and safe (p.6), when applied to surfaces, of plant or inanimate materials (p. 7) at 0.01-5g/kg. Agents include phenols, (p.9, p.10) propylene glycol (p. 9, 1), benzyl alcohol, phenylethyl alcohol, propylene glycol, n-butyralcohol and isobutyl alcohol (p.7) ,Acids (p. 11, V), and tannic acid; equivalent to tannin (p. 8, 44), and/or, equivalently lactic acid. Less than 50% Benzyl alcohol can be utilized with only 1 other of the compounds, or more if desired, to attain a microbiocidal effect (p. 13).

Rapeseed oil is not discussed.

Mc Cardle shows sprayable compositions for plant treatment inclusive of antimicrobial agents, with adjuvants (col. 3, lines 5-28). Acidulates are shown to be equivalently tannic or lactic acid (col. 7, lines 8-11), mixtures are also taught. Solvent systems include water and propylene glycol (col. 7, line 28-33).

Beilfuss shows aqueous sprayable compositions for plant treatment inclusive of antimicrobial agents, with adjuvants (p.4). Phenolics are 1-80%, no polyphenols are seen. An alcohol is equivalently or mixes, of phenylethanol or benzyl alcohol.

Antimicrobial efficacy is disclosed (p. 11, p. 12).

Bessette (p. 15) also shows mixes of phenol compounds with phenyl and

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phenylethyl alcohols (3c) applicable to plants in aqueous or vegetable oil solvents (p. 19) .

Stevenson shows crop oils as equivalently castor oil, Rapeseed oil, soybean oil (col. 54) when applied to crops in compositions with other microbial, diluents as sprays (col. 58).

Although Tobacco is not specified in these references, they show protection against fungus and bacterial, by application to plant or plant products, utilizing safe, natural, and essential oil derivatives alone and in combination. Er+Exemplifies post harvest treatment specifically of Tobacco. One of the equivalent natural compounds of the cited prior art is elastic acid (col. 1, line 50-61) applied as spray to dried, post harved, tobacco leaf surfaces (p. 1 , lines 105 - P. 2, line 5).

The primary references disclose the essence of the instant invention as claimed, but do not specify each and every concentration or element of the instantly claimed compositions. However, the secondary reference solves the problem of the primary reference, providing the equivalent and use components in compositions applied to plants or plant parts as protective compositions. Schur provide the instant components, show they can be used as single or multiple ingredients', show the equivalence of these components and show concentrations as instantly, claimed, exemplifying benzyl alcohol as a favored, but not required, component', directed to treating after harvest to reduce microbes. Mcardle, Beilfuss and Bessette also show use of limited mixes of the instant components, also for treating plants, and at instant concentration thus with attendant instant antimicrobial effects. Thus any of these combinations would also be of use in

treating ErsleMs tobacco leaves.

Thus, the artisan would find it obvious to prepare particular ingredient combinations, depending upon the factors typically used in the art, inclusive of ingredient compatibility, flavor, stability, handling, and cost considerations, besides those of desired number of applications, length of time for desired protection, ease of handling, target species, degradation, for example.

It has not clearly been established by objective showing of some unobvious and/or unexpected results that the administration of the padicular form of active, carrier, or the time to be treated provides any greater level of prior art expectation as claimed. Further, no criticality as to the particular compound or mixes thereof has been shown by applicant. Rapeseed oil and castor oil are shown as equivalent, by Stevenson thus either would serve, in the Bessette example for instance tannin and tannic acid are shown by Schur, WO, as equivalent; thus either, or both, in the Schur patents, would serve as obvious components, or would replace the tannic acid or lactic acid of Mc Cardle. Beilfuss shows neither tannic acid or tannin is required in phenol antimicrobial mixes, thus the combination of alcohols of Schur would also be an obvious compositional approach to provide antimicrobial efficacy.

None of these ingredients as equivalents or combinations has been shown to interfere with their utilization in these prior art compositions to provide protection when sprayed on crop or plant parts, thus the instant essentiality is not seen as adversely altering the compositions or their use.

The selection of each ingredient and amount thereof is a result effective parameter chosen to obtain the desired effects. It would be obvious to vary the nature of each ingredient to optimize the effects desired, and the use ingredients for the functionality for which they are known to be used is not a basis for patentability. It would have been obvious to one with ordinary skill in the art at the time of the teachings referenced show their use. The specific weights, and additives are result effective parameters subject to control by one with skill in the art.

Applicant's arguments filed 4/20/06 have been fully considered but they are not persuasive.

Applicant's arguments are to the use of the page 28 table as showing narrowly defined compositions which a T1-T12 are within the claims which show reduced mold. However, claims are to any microbial attack, and do not recite the per cent or ratio as of 5 or 6 components shown as the tested (p. 26) material applied to plants. No claim recites these 5 or 6 components.

As to the obviousness rejection, applicant argues post harvest protection of tobacco is not shown. However, the prior art applies the instant compositions with the same degree of support and expectation as seen for the instant claims, thus would be as evident to be effective if applied to tobacco,, as shown by ERSLEV, one of the crops or food products treated as is well known in the art to do.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

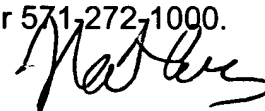
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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


NEIL LEVY

NEIL S. LEVY
PRIMARY EXAMINER